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THE RAILROAD HOURS OF LABOR LAW

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In this discussion I represent neither capital nor union, but merely the part of the people of the United States that too often have been disregarded by both—the public.

I am in favor of the organization of capital whenever capital carries on its enterprises with due consideration for the welfare of the people. I have always been strongly in favor of the organization of labor; and I am now in favor of supporting the unions whenever they push their own interests with due consideration for the interests of the public.

As a background for the discussion it is necessary to consider for a moment the exceptional situation which exists for the public utilities. It is now generally recognized that the public utilities, and particularly the railroads, are subject to regulation through commission so far as the managements are concerned. The movement for their control was most strenuously resisted by the managers. Indeed they insisted that their business was a private one which they should handle as they pleased, but the public by sheer force imposed control upon them despite their most desperate resistance.

At the present time not only the right but the imperative necessity for public control of the railroads is recognized by all.

But it is to be noted that regulation only concerns the management. There is no public control in any whatsoever of the employees. Thus far the control has been one-sided.

In the early railroad controversies between managers and employees, the managers were the stronger. The bargaining was individual, or it concerned a division, or at most a railroad system. Under these conditions not infrequently the managers would refuse to arbitrate; and, if they did consent to do so, it was with the greatest reluctance. However, the local unions gradually recognized the increasing power given them by coöperation, and in 1902 began the concerted movement under which a union made demands upon the employers for an entire district. The increased power of

the unions given by the concerted movement, when once appreciated, led them to a number of such movements within a few years. Each of these was confined to one union but extended over a large section of the country. This may be illustrated by the engineers' concerted movement of 1912 for the northeastern part of the United States. Such a movement gave the unions equal or greater power with the managers; and then the managers were ready to arbitrate, and the unions were somewhat hesitant.

Finally in the spring of the present year a concerted movement of the four powerful unions operating trains—locomotive engineers, firemen, conductors, and trainmen—for the entire United States was organized and demands made upon the managers. Under these circumstances the power of the unions was far greater than that of the managers; and consequently the managers were ready to arbitrate and the unions would not agree to do so.

History shows that between the two there is no choice. When the employers were in the saddle they gave little heed to the public except as they were compelled to do so. Now that the unions are in the saddle they have begun to use their power in precisely the same manner as did the managers, giving no heed to the public. The question now is: will the unions pursue this policy until compelled to give such consideration, or will they be wise enough, knowing the history in regard to the managers, to steer a better course?

In the controversy under discussion the unions demanded (1) an eight-hour basis for the hundred mile run instead of the ten-hour basis, (2) time and a half for overtime, and (3) the retention of all present advantages. After the managers had agreed to arbitrate and the unions refused to arbitrate, President Wilson proposed, on August 15, 1916, that the railroads grant the eight-hour day and that the workers abandon the demand for time and a half for overtime.

It is not now possible to discuss the merits of either of these proposals. I merely wish to point out that the demand for the eight-hour day is not what it appears to be. The division points on the railroad have been arranged upon the basis of the hundred mile run as the day's work, controlled, however, to a considerable extent by the large centers which necessarily are terminals. By act of Congress the position of the terminals cannot be changed, and the basis of the day must remain the hundred mile run.

Already it has been recognized in the passenger service that five hours is a reasonable time in which to run one hundred miles, and the men get overtime if more than five hours are used. The question in the case of the freight service is whether or not eight hours is a reasonable time in which upon the average to make one hundred miles. In this connection it should be recalled that the harder service involved by the powerful locomotives and heavy freight trains is recognized by variable compensations in proportion to the character of the engine, and is greater per mile run than in the passenger service. A law requiring the men operating the trains to cease work after eight hours is wholly impracticable.

Since this is so, to call the Adamson law an eight-hour day law is a misnomer. If eight hours is a reasonable time in which to make one hundred miles in the freight service, then overtime should be paid after eight hours; if not, it should not be paid. This is a question so exceedingly complicated and involves so many factors that it would be folly on my part to give an opinion concerning its merits without a most exhaustive investigation.

However, under threat of strike, with the recommendation of the President, Congress in four days passed a law, which was signed by the President September 3, 1916, making eight hours the basis of the day's work and at the same time disregarded another recommendation of the President that the law should be amended along the lines of the Canadian Industrial Disputes Act.

The additional cost of operating the railroads due to the law, estimated at many millions of dollars, now passes on to the public. Under regulation the railroads are limited to reasonable charges by the Interstate Commerce Commission. Any great increase in the cost of operating the roads sooner or later passes on to the public. Only recently a 5 per cent advance in freight rates has been authorized. The public must pay the additional millions, because of the Adamson law, in advance of its being ascertained whether or not it should take the burden. The claims of the men may have been just or unjust. I pass no opinion upon them. If the claims were just, why not have had an investigation by an impartial tribunal in which the public, the managers, and the employes were represented? If they were just, the demands would have been granted; and if they were unjust, they would have been denied, and the public would not have been mulcted of a great sum of money. However this

is a trivial matter as compared with the precedent which has been set.

We have a situation new in this country in which the unions tell the government what laws shall be passed and it meekly obeys.

The principle has been yielded that 400,000 men can refuse to have their cause investigated and adjudicated, threaten strike, and secure legislation, thus holding up 100,000,000 people.

As one of the 100,000,000, I enter my most earnest protest against this surrender of the government. The unions are now encouraged by their success. What is to prevent them two years hence or four years hence, when an election is pending, from demanding of a timid government that they receive time and a half for overtime, without any adjudication of the merits of the question?

But suppose the strike had been called and it had been successful, what would be the situation? In the United States there is one city, New York, with over 5,000,000 population; one city, Chicago, with more than 2,000,000; one, Philadelphia, with more than 1,500,000; there are five cities, St. Louis, Boston, Cleveland, Baltimore and Pittsburgh, with more than 500,000 population; and eleven cities, Detroit, Buffalo, San Francisco, Milwaukee, Cincinnati, Newark, New Orleans, Washington, Los Angeles, Minneapolis, and Jersey City, with more than 250,000.

No other country in the world possesses so many large cities; just as there is no other country which approximates ours in railroad mileage. One is a function of the other; neither could exist alone. Large cities are one of the consequences of the modern industrial system. In ancient times there were no cities comparable in magnitude even to those of Chicago or Philadelphia, much less that of New York, for the simple reason that the people could not have been fed. Only by the continuous operation of the railroads can the people in the great cities secure food.

If a railway strike was declared and it was successful, the babies would begin to suffer for milk in a day; the perishable foods would be scanty in a week; and before a month had gone by the people would be in want for the very necessities of life.

If the operation of the trains ceased for any considerable time the greater number of the manufactories would be obliged to discontinue, both because they could not secure supplies and could not sell their products. The financial losses would be incalculable,

to be reckoned as the lowest unit, in hundreds of millions of dollars. Hundreds of thousands of laborers would be out of employment; and they would not have the money to purchase food even if it were obtainable.

The loss of life would be worst among the families of laboring men and especially the babies. The well-to-do would be able to purchase at high prices the scanty foods obtainable; and the rich, while they might suffer financial loss, would endure no hardship. The unions would be responsible not only for the paralysis of the trade and industry of the country but for the death of perhaps hundreds and the misery of millions of people less fortunate in compensation and in position than the men of the unions. The disaster to the nation would be far beyond my power to conceive or describe.

If the tremendous responsibility of a general railway strike is once appreciated by the men of the unions, I have a better opinion of them than to believe that they will ever bring dire disaster upon the country simply to advance their own selfish interests. They should unite with the public in finding a solution of the problem which will make a railroad strike in the future an impossibility. If they refuse to do this it will be necessary, just as it was with the managers, to force control upon them. The railroads *must be* continuously operated. Some other way must be found than by strike or lockout to settle the differences between the managers and employees for the public utilities.

If the question ever goes to an issue, there can be no doubt of the result. President Wheeler, of the University of California, in his first address as exchange professor at the University of Berlin, said: "In America, the ultimate source of authority is public opinion." Either managers or employees who refuse to recognize the power of this public opinion when united would be crushed. If public opinion were once united, as it would be if a strike were called, there would be a power which Congress would fear even more than it fears the unions.

What, then, is the line of progress? This is the question which deeply concerns us. The answer must rest upon the principle that the interest of the public in the operation of the railroads is paramount, and that the interests of the managers and unions are strictly subordinate. To this paramount interest both must sub-

mit. An intolerable situation exists so long as any group or groups of men, whether managers or union, can halt the continuous operation of the trains.

We now turn for a moment to the experience of other countries to assist us in finding a way. In 1910 a general railway strike was called in France; and the conditions above described threatened that country. Minister Aristide Briand immediately, under the authority of military law, commanded the mobilization of the strikers for three weeks of military training. The military duty to which they were summoned was running the trains. Disobedience would entail punishment under military law. The strike was broken in six days.

Later, in discussing the matter, Briand declared "that public servants must be required to discharge their duties regularly and without interruption." Indeed he regarded the operation of the railroads as so imperative that he declared:

If the government had not found in the law that which enabled it to remain master of the frontiers of France, and master of its railways, which are indispensable instruments of the national defense; if, in a word, the government had found it necessary to resort to illegality, it would have done so.

This he regarded as defensible under the doctrine *Salus publica suprema lex*. Briand, at this most critical time in the history of France, is Prime Minister of that country.

In Germany, so clearly recognized is the public interest in the operation of the trains that unionism is not allowed on the railroads, although recognized as legitimate in private industry. In New Zealand, strikes and lockouts are illegal altogether until a hearing is held before a court of arbitration and recommendations made. The law is so operated that lockouts and strikes have practically ceased. In Australia is a conciliation and arbitration act with provisions similar to those of New Zealand, providing for compulsory arbitration in all labor disputes. In Canada strikes and lockouts are illegal until a board of conciliation has investigated the facts and made recommendations for the settlement of the dispute. In operation, this law has greatly reduced the number of important strikes, because either side failing to accept the recommendations of the board has a unanimous public sentiment against it. South Africa has a law for preventing strikes and lockouts similar to that of Canada.

The facts cited show how far the United States are behind many other countries in the machinery to control emergencies such as arose last autumn.

In this country we have only the Newlands act which furnishes mediation and arbitration provided both sides agree. I cannot now go into the details of the law. Its impotency in an emergency has been shown. As a minimum step this law should be amended along the line of the Canadian Industrial Disputes Act, so as to compel investigation and recommendations by a tribunal in which the public is represented before a strike can be declared upon the railroads. It is probable that in any given case, if such a law were in force, so that public opinion could be crystallized by an investigation and recommendations of the board, neither side would dare disregard those recommendations.

If Congress does not pass the measures suggested or some other, with similar purposes, if it makes no attempt to remedy the situation, and the country is left in a position in which it may again be held up, that body will be indeed recreant to its trust.

I have no doubt the courts will maintain that compliance with the law proposed is not "involuntary servitude." The public interest in the operation of the railroads is so dominating that the same principles are applicable that have been held to apply in the case of the Seamen's Act and in regard to quitting trains between terminals. A strike in the railway service is of such momentous consequence to the public that the right of concerted action to discontinue service *must be qualified*.

However, even if the measure proposed be enacted into law, it is not a final solution of the problem under discussion. There is only one final solution of that problem and that is to carry the principle of regulation to its logical conclusion.

At the beginning of my paper I pointed out that regulation has been accepted as a public policy both national and state so far as the managers are concerned. The principle should be carried to the employes as well. A commission should be granted the power to fix wages for public utilities. I do not care whether there be created a separate wage commission or there be added a branch to the Interstate Commerce Commission for this purpose. There would be some advantages in having a separate commission; for then there would be one body concerned primarily with rates and

another concerned primarily with wages. Much of the statistical investigation which is necessary for one may be used by the other; and there could be a central organized bureau of experts and statisticians who would be continually collecting information for both.

Why is the proposed law logical? Why is it necessary? Because if the public interest is paramount in the operation of public utilities, then the rates allowed to be charged decide what the railroads can pay in wages. The railroads should be allowed to charge rates which give a fair dividend and no more upon the stock, pay the interest on the bonds, and pay a just wage not to one group of employes, but to all groups. A wage commission would not raise the pay of the highest paid group and, by indirection, hold horizontal or depress the pay of the poorest paid group.

The proposed amendment of the Newlands Act, while it might prevent strikes and lockouts and so avoid the greatest injury to the public, would not remedy the defect of an unjust scale of wages. It would not put the employes of the railroad upon an equal basis. If, however, there were a wage commission which at all times was studying the question of the proper relative wages of the different employes of the railroads and in relation to the wages that are paid in other industries; if it could study the question with relation to times of prosperity and times of stagnation, such a commission would be better able to determine what is a fair wage for each class of employes than are the managers or are the men.

We cannot expect the men to surrender the right to strike unless there be provided some measure which will give them fair wages and proper conditions of service; and, therefore, if the right to strike is to be curtailed it must be accompanied by some law which will insure fair treatment; and this can only be accomplished through a wage commission.

My remedies, therefore, for the existing railroad situation are, first, alleviation:—amend the Newlands Act so as to prohibit a railway strike until after an investigation of the controversy and recommendations concerning its settlement; and, secondly, as a final solution, the creation of a wage commission either as a branch of the Interstate Commerce Commission or independent of it to handle wages for the railroads.

I do profoundly hope that the present Congress will enact legislation to rescue the country from its present humiliating sit-

uation. There can scarcely be a doubt that every foreign civilized nation was amazed that the United States, which is regarded at this time as the one great neutral nation which must exercise vast moral power upon the belligerents in the settlement of the world war, has so weak and feeble a government, that it cannot handle an economic problem which concerned a small group of its own people. I can scarcely think of our position before the civilized people of the world without my cheeks becoming hot with shame. I hope that we may escape from further ignominy, and that never shall a situation recur in which the government of the United States surrenders to a minority insignificant in numbers.